UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

LG CAPITAL FUNDING, LLC

Plaintiff,

v.

BLUE SPHERE CORP.

Defendant.

Civil Action No.: 1:20-cv-04882 (PKC)

DECLARATION OF JOSEPH LERMAN IN SUPPORT OF PLAINTIFF'S MOTION FOR <u>DEFAULT JUDGMENT</u>

Joseph Lerman declares the following to be true under penalty of perjury:

- 1. I am a member of Plaintiff, LG Capital Funding, LLC ("LG"). I submit this Declaration in support of LG's Motion for Default Judgment against Blue Sphere Corp. ("BLSP").
- 2. LG is a limited liability company formed under the laws of the State of New York. Its principal place of business is located in Brooklyn, New York. All members of LG are citizens of New York.
- 3. Upon information and belief, Defendant Blue Sphere Corp. is a corporation organized and existing under the laws of the State of Nevada, having its principal place of business located at 301 McCullough Drive, 4th Floor, Charlotte, NC 28262.
- 4. As described in further detail in the Complaint, LG is entitled to damages in the amount of \$120,112.97, as well as attorneys' fees and costs incurred in the collection of any amount due under the Note.
- 5. LG is entitled to damages for BLSP's breach of a convertible redeemable note (the "Note"). On or about May 11, 2018, BLSP's directors executed a unanimous consent in lieu of a special meeting of the directors ("Unanimous Consent Decree") authorizing BLSP to enter into the SPA and the Note described below. Dkt. $1, \P 6$; Dkt. 1-1.

- 6. On or about May 11, 2018, LG and BLSP entered into a Securities Purchase Agreement (the "SPA"), which provided for the purchase and issuance of a 12% convertible note in the aggregate principal amount of \$78,750.00. Dkt. 1, ¶ 7; Dkt. 1-2.
- 7. Pursuant to the terms of the SPA, on or about May 11, 2018, BLSP issued to LG a \$78,750.00, 12% Convertible Redeemable Note (the "Note"). Dkt. 1, ¶ 8; Dkt. 1-3.
- 8. On the same day, May 11, 2018, BLSP sent LG a disbursement authorization memorandum (the "Disbursement Memorandum") in connection with funding of the Note. BLSP instructed LG to disburse \$3,750.00 to Investors Counsel Attorneys, P.C., \$6,000.00 to Carter Terry & Company, and \$69,000.00 to BLSP. Dkt. 1, ¶ 9; Dkt. 1-4.
- 9. On the same day, May 11, 2018, BLSP directed its transfer agent ClearTrust, LLC ("Transfer Agent"), to reserve a specific number of shares of BLSP common stock ("Common Stock") (initially, 385,175 shares of Common Stock) in accordance with the terms of the Note ("Transfer Agent Agreement"). Dkt. 1, ¶ 10; Dkt. 1-5.
- 10. On May 16, 2018, LG funded the Note pursuant to the Disbursement Memorandum. Dkt. 1, ¶ 11; Dkt. 1-6.
- 11. The Note provide that BLSP promised to pay to the order of LG and its registered assigns, the aggregate principal face amount, as well as interest thereupon, on the Note's maturity date, May 11, 2019. Dkt. 1, ¶ 12; Dkt. 1-3, p.1.
- 12. The Note provides that "[u]pon an Event of Default, interest shall accrue at a default interest rate of 24% per annum or, if such a rate is usurious or not merited by current law, then at the highest rate of interest permitted by law." Dkt. 1, ¶ 13; Dkt. 1-3, §8.
- 13. In addition to LG's return on investment vis-à-vis the Note's interest rate, Section 4(a) of the Note provided LG with the right to convert all or part of the outstanding and unpaid

principal into shares of BLSP common stock (the "Common Stock") at a discount to the market price. Dkt. 1, ¶ 14; Dkt. 1-3, §4(a).

- 14. To exercise its conversion right, LG was required to submit a "Notice of Conversion" to BLSP. Dkt. 1, ¶ 15; Dkt. 1-3, §4(a).
 - 15. LG did not opt to exercise its right to submit a Notice of Conversion. Dkt. 1, ¶ 17.
- 16. Section 8 of the Note provides for events, each of which constitutes an "Event of Default," upon which the Note shall become due and payable and after which interest shall accrue at a rate of 24% per annum. Dkt. 1-3, §8. BLSP breached the Note when it caused each of the following Events of Default. Dkt. 1,¶18.
 - 17. First, Section 8(i) of the Note states that it shall be an Event of Default if "[BLSP] shall have its Common Stock delisted from an exchange (including the OTC Market exchange) or, if the Common Stock trades on an exchange, then trading in the Common Stock shall be [sic] suspended for more than 10 consecutive days[.]"

Dkt. 1, ¶ 19; Dkt. 1-3, §8(i).

- 18. On April 1, 2019 Defendant filed a Form 15 Certification and Notice of Termination of Registration, causing its Common Stock to be delisted. Thus, Defendant caused an Event of Default under Section 8(i). Dkt. 1, ¶ 20.
- 19. Second, Section 8(a) of the Note states that it shall be an Event of Default if Defendant "shall default in payment of principal or interest on this Note or any other note issued to [LG] by [BLSP][.]" Dkt. 1, ¶ 21; Dkt. 1-3, §8(a).
- 20. On May 11, 2019, by failing remit payment on the Note's maturity date, and failing to make payment to date, Defendant caused the Event of Default stated in Section 8(a). Dkt. 1, \P 22.

- 21. Third, Section 8(c) of the Note states that it shall be an Event of Default if "[BLSP] shall fail to perform or observe, in any respect, any covenant, term, provision, condition, agreement or obligation of [BLSP] under this Note or any other note issued to [LG][.]" Dkt. 1, ¶ 23; Dkt. 1-3, §8(c).
- 22. By failing to repay the Note, Defendant caused an Event of Default under Section 8(c) of the Note. Dkt. 1, ¶ 24.
- 23. Thus, Events of Default, which each would trigger the 24% default interest obligation on its own, occurred on April 1, 2019 and May 11, 2019. Dkt. 1, ¶ 25.
- 24. Consequently, Default Interest at a rate of 24% has accrued and continues to accrue from April 1, 2019 to date. Dkt. 1, ¶ 26.
- 25. To date, BLSP has not tendered payment of the Note's outstanding principal and accrued interest. Dkt. 1, ¶ 27.
- 26. At no point has LG ever, whether formally or informally, in writing or orally, waived any of BLSP's defaults. Dkt. 1, ¶ 28.
- 27. Due to BLSP's persistent and willful failure to remedy its breaches, LG has incurred significant damage. Dkt. 1, ¶ 29.
- 28. Default interest at a rate of 24% per annum has been accruing on the outstanding principal balance since the first Event of Default, April 1, 2019. Dkt. 1, ¶ 30; Dkt. 1-3, §8.
- 29. Therefore, as of October 30, 2020, LG is entitled to \$120,112.97 in compensatory damages on the Note, consisting of \$78,750.00 in outstanding principal, \$8,284.93 in regular interest, and \$33,078.04 in default interest, which continues to accrue at a rate of \$57.23 per day. *See* **Figure 1** below.

Figure 1

LG Capital Funding: BLSP Note	
Face Value	\$78,750
Converted Principal	0
Balace	\$ 78,750.00
Commencement Date	5/11/18
Funding Date	5/16/18
Default Date	4/1/19
Days of Regular Interest	320
Days of Default Interest	578
Regular Interest Rate	0.12
Default Interest Rate	0.24
Regular Interest Accrued.=	
[(Balance x Regular Interest	
Rate) x (Days of Regular	
Interest/365)]	\$ 8,284.93
Balance on Default Date =	
Balance + Regular Interest	
Accrued	\$ 87,034.93
Default Interest Accrued =	
[(Balance on Default Date x	
Default Interest Rate) x (Days of	
Default Interest/365)]	\$ 33,078.04
Total Due and Owing on	
10/30/20 = Balance on Default	
Date + Default Interest Accrued	\$ 120,112.97

30. In addition, the Note provides that "[BLSP] agrees to pay all costs and expenses, including reasonable attorneys' fees and expenses, which may be incurred by [LG] in collecting any amount due under this Note." Dkt. 1-3, §7. Further,

"[i]f [LG] shall commence an action or proceeding to enforce any provisions of this Note, including, without limitation engaging an attorney, then if [LG] prevails in such action, [LG] shall be reimbursed by [BLSP] for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding."

Dkt. 1, ¶ 32; Dkt. 1-3, §8.

- 31. Thus, in addition to damages, LG is entitled to costs and attorneys' fees incurred in collection under the Note as described in the Declaration of Jacob Pargament filed herewith.
- 32. For the foregoing reasons, I respectfully request that the Court grant Plaintiff's Motion for Default Judgment and the relief requested therein in its entirety.

Case 1:20-cv-04882-PKC Document 16 Filed 10/30/20 Page 6 of 6

DATED:

Brooklyn, New York October <u>28</u>, 2020

Joseph Lerman